

# State of South Dakota

## EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

400L0207

### SENATE BILL NO. 8

Introduced by: The Committee on Local Government at the request of the Office of the  
Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning voter tabulation  
2 systems.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 12-16-3.1 be amended to read as follows:

5 12-16-3.1. If more than one political party qualifies for the general election, the position of  
6 each party's candidates on the ballot shall be determined by drawing of lots by the secretary of  
7 state at the same time and in the same manner as prescribed for candidates in § 12-16-8.  
8 Representatives of the parties may be present when the arrangement is determined. On paper  
9 ballots, the first party name drawn shall be placed in the left-hand column, the second party  
10 name drawn shall be placed in the next column, and each succeeding party name drawn shall  
11 be placed on the ballot in the order drawn. On ~~punch-card ballot labels~~ direct recording  
12 electronic screens, on electronic ballot marking system screens, and on optical scan ballots, the  
13 candidate names shall appear in the order in which their party name was drawn.

14 Section 2. That § 12-17B-1 be amended to read as follows:

15 12-17B-1. Terms used in this chapter mean:



- 1 (1) "Automatic tabulating equipment," the apparatus necessary to automatically examine  
2 and count votes as designated on ballots, punch cards, or entered directly into a  
3 computer by means of a touch screen or other data entry device and data processing  
4 machines which can be used for counting these votes and tabulating results;
- 5 (2) "Ballot," paper ballots containing the names of candidates and statements of  
6 measures to be voted on;
- 7 ~~(3) "Ballot labels," the cards, booklet, or pages containing the names of officers and~~  
8 ~~candidates and statements of measures to be voted on;~~
- 9 ~~—(4) "Counting location," any location selected by the person in charge of the election for~~  
10 ~~the counting of votes cast in an election. A counting location shall be within the~~  
11 ~~territorial jurisdiction of such person unless there is no suitable tabulating equipment~~  
12 ~~available within the jurisdiction. However, in any event, all counting locations shall~~  
13 ~~be within this state;~~
- 14 ~~(5) "Marking device," an apparatus in which punch cards are inserted and used in~~  
15 ~~connection with a punch apparatus for the piercing of punch cards by the voter;~~
- 16 (4) "Direct recording electronic," a voting system which records votes by means of a  
17 ballot display provided by electro-optical devices that can be actuated by the voter,  
18 that process the data by means of a computer program, and that records voting data  
19 in internal memory devices;
- 20 (5) "Electronic ballot marking system," any electronic device which marks votes on a  
21 ballot;
- 22 (6) "Optical scan," a procedure in which votes are tabulated by means of examining  
23 marks made in voting response locations on the ballots with an optical mark reader  
24 (OMR);

(7) ~~"Punch card," a ballot which is voted by the process of punching;~~

~~(8)~~ "Resolution board," a board at an automatic tabulating location comprised of a representative from each political party having a candidate on the ballot and whose candidate on the county-wide ballot at the last general election received at least fifteen percent of the votes. The board shall determine the disposition of those ballots which cannot be properly counted by the tabulating equipment and observe the activities at the counting location on behalf of their respective party affiliation. In strictly nonpartisan elections, the resolution board shall be comprised of two persons who are not employees of the jurisdiction conducting the election and shall be appointed by the person in charge of the election;

~~(9) "Direct recording electronic," a voting system which records votes by means of a ballot display provided by electro-optical devices that can be actuated by the voter, that process the data by means of a computer program, and that records voting data in internal memory devices.~~

Section 3. That § 12-17B-2 be amended to read as follows:

12-17B-2. Any automatic tabulating, direct recording electronic, or electronic ballot marking system used in an election shall enable the voter to cast a vote for all offices and on all measures on which the voter is entitled to vote. ~~All automatic tabulating equipment~~ Each system shall fulfill the requirements for ~~federal~~ election assistance commission standards certification and be approved by the State Board of Elections prior to distribution and use in this state. No ~~automatic tabulating equipment~~ system may be approved unless it the system fulfills the requirements as established by the State Board of Elections. Any changes or modifications to an approved ~~automatic tabulating~~ system shall be approved by the State Board of Elections prior to distribution and use.

Section 4. That § 12-17B-3 be amended to read as follows:

12-17B-3. Any governing body having supervision of elections within any political subdivision may adopt, experiment with, or abandon any automatic tabulating, direct recording electronic, or electronic ballot marking system approved for use ~~in this state, and by the State Board of Elections.~~ Any governing body may use the system in all or some of the precincts within its jurisdiction or in combination with any other type of voting system, ~~likewise~~ approved for use ~~in this state~~ by the State Board of Elections.

Section 5. That § 12-17B-4 be amended to read as follows:

12-17B-4. The governing body of a political subdivision may contract with any county for the use of an automatic tabulating, direct recording electronic, or electronic ballot marking system for elections within the political subdivision.

Section 6. That § 12-17B-6 be amended to read as follows:

12-17B-6. The person in charge of the election shall provide a sufficient number of voting equipment and supplies to accommodate the voters and avoid unreasonable waiting times for casting ballots ~~and in punch card precincts shall cause the marking devices to be put in order and the set adjusted and made ready for voting when delivered to the polling places.~~

Section 7. That § 12-17B-8 be repealed.

~~12-17B-8. Optical scan and punch card absentee ballots shall be of the same type used at the precincts. In a runoff election, absentee ballots shall be of the type designated by the person in charge of the election.~~

Section 8. That § 12-18-1.3 be repealed.

~~12-18-1.3. If punch card ballots are used, before the opening of the polls the members of the precinct election board shall compare the ballots used in the marking devices with the sample ballots furnished and see that the names, numbers, and letters on the sample ballots agree and~~

1 ~~shall certify that fact on forms provided by the person in charge of the election.~~

2 Section 9. That § 12-18-16.2 be repealed.

3 ~~—12-18-16.2. If a punch card ballot is used, the voter may use the stylus provided to dislodge~~  
4 ~~the chad indicating the voter's choice.~~

5 Section 10. That § 12-26-23.1 be amended to read as follows:

6 12-26-23.1. No person may intentionally program or alter an automatic ballot counting  
7 device, direct recording electronic voting machine, or electronic ballot marking system to  
8 erroneously mark, record, or count voted ballots or to render an erroneous total. ~~No person may~~  
9 ~~intentionally alter a punch card ballot booklet to the extent that votes are miscast or are unable~~  
10 ~~to be cast because of the misalignment of the punch card or other alteration.~~ A violation of this  
11 section is a Class 5 felony.